

ZONING BOARD OF APPEALS

JULY 16, 2012 MEETING MINUTES

PRESENT: Chairperson Ron Nolland, Kathy Latinville, Michelle Labounty, Connie Fisher, Maurica Gilbert, Scott DeMane (Alt.)

ABSENT: Karl Weiss (Alt.)

ALSO PRESENT: Joseph McMahon, Housing Code Inspector
Jack Stone
Greg Fleming, Stone's Smoke House
Mike Pettit
Kay and George Hubbell
Janet McCooley, Laurie McCooley
Peter Chase
Kathy Davis

Mr. Nolland called the meeting to order at 7:07 PM. The following items were scheduled for tonight's meeting.

APPEAL	APPLICANT	REQUEST
1889	LAKE CHAMPLAIN POOLS 106 BOYNTON AVENUE	CLASS B VARIANCE REQUESTING MORE SIGNAGE THAN ALLOWED, PROPOSING LED MESSAGE BOARD
1898	JANET MCCOOEY 76 WALL STREET	CLASS B VARIANCE TO CONSTRUCT AN 8 FOOT FENCE IN A RESIDENTIAL DISTRICT WHICH RESTRICTS FENCES TO 6 FEET
1936	PETER CHASE 48-50 CHAMPLAIN STREET	CLASS B VARIANCE CONSTRUCT A DECK WITHIN REQUIRED SETBACK, EXCEEDS LOT COVERAGE AND DEFICIENT IN OPEN SPACE
1937	MICHAEL PETTIT 111 COURT STREET	CLASS B VARIANCE CONSTRUCT A FENCE WITHIN
1938	STONES SMOKEHOUSE & MEAT PACKING 55 WEED STREET EXT. 59 WEED STREET EXT AKA 57 WEED STREET & WEED STREET	ADMINISTRATIVE REVIEW TO ALLOW A SLAUGHTER HOUSE OPERATION WITH LIMITED HANDLING OF LIVESTOCK

There are 5 zoning board members available for voting tonight.

Mr. Nolland advised they would hear the appeals in the following order:

1. Stones Smoke House
2. Janet McCooey
3. Michael Pettit
4. Lake Champlain Pools
5. Peter Chase

The **first** item on the agenda was Appeal 1938, Stones Smokehouse and Meat Packing, Administration Review.

Meter 00.34

Mr. Fleming will be speaking on behalf of Mr. Stone.

Mr. Nolland advised they were a little confused in that they thought they would have a written decision of the Building Inspector to review. What they have is the administrative review form. This form says determination appealed, which they don't have. It says:

- A. "Determination appealed. Identify food processing as a principle permitted use.
- B. "Holding animals is accessory to that use."

Mr. Nolland asked why they were present.

Mr. Fleming explained they were here to start over again. He's only been involved with this project for a few weeks. He is in real-estate consulting for 34 years and is from Vermont. He resides in Champlain, NY. He met Mr. Stone out of competition. He contacted the food extension service about putting up a food processing facility in Champlain. That's when he met with Mr. Stone and spoke about a meat processing facility. He is coordinating and acting as his consultant. One thing he did in error is identify the Weed Street location when it's not under contract.

Mr. Fleming continued stating it is allowed under industrial as a permitted principle use. Then if the issue becomes livestock, kept and maintained, then discuss that. He has also worked with Glen Cutter and Rodney Brown and asked their thoughts. Mr. Fleming then asked if the Board had any emails from the Mr. Cutter. Mr. Nolland responded saying they have emails.

Mr. Fleming filed a memorandum simply this and discuss this as a use that's permitted and discuss the other definition of the words and maybe provide information so a reasonable person can see the difference between this and an agricultural use. He reiterated he is trying to simplify the process.

Mr. Nolland advised the issue they have is they don't have a written decision from the Building Inspector. **The issue here is "what is livestock."**

Mr. Nolland has been trying to get a committee together to make some changes to zoning laws. He explained the process of changing the zoning ordinance, [Meter 6:05]

Two things have been asked of the Zoning Board in the Industrial Zone. One is the allowance of residential use in the industrial use. The process is the Common Council needs to change the zoning law to determine that the holding of livestock, even for 5 minutes, is not maintenance or owning livestock in the City. The ordinance says you cannot hold or own livestock in the City. Even 5 minutes is maintenance of livestock in the City.

Mr. Fleming understood the concern. He added the term “livestock” is kept in an agricultural setting. Mr. Nolland said no – it’s actually defined in the ordinance as cows, pigs. It doesn’t matter if it’s an agricultural setting or not.

Mr. Nolland further explained if in fact this is the decision of the building inspector and if his intent is to say the holding of animals is accessory use, or not allowed as a principle use – anywhere in the City - his recourse is if he wants to change the law, he needs to go to the Common Council and request a change in the zoning ordinance. The Zoning Boards only power is to uphold or not uphold the decision of the Building Inspector. The Building Inspector’s decision was based on the decision the Board made the last time. He upheld the Board’s decision.

Mr. Fleming asked what livestock is.

Ms. Gilbert stated his only option here is to change the zoning law.

Mr. Fleming asked about Section 270 – except that of a USDA approved facility.

Mr. Nolland advised he would be glad to meet with Mr. Stone to discuss this.

Mr. Nolland discussed the time table this would take. His best avenue would be to go to the Common Council. He suggested being very very specific so people know how this operation would work so that everyone understands. Photos were discussed. He spoke again about the Building Inspector’s decision and to concentrate on changing the law. [Meter 14:00]

Mrs. Labounty spoke about Rouses Points cheap inexpensive electric rates.

Mr. Fleming spoke about the few places that beef can go to be slaughtered and process, if it’s not USDA approved – it goes back to the farmer. The USDA designation is very important. Ms. Labounty thought it was just the local. Mr. Fleming said the one thing regarding this site vs. Champlain site is the ability to do retail. He didn’t know if this was allowed under industrial.

A facility at Ticonderoga was discussed. [Meter 18:00 – 20:00] Mr. Stone said it would cost a lot of money to bring animals to Ticonderoga.

Mr. Nolland opened up the public hearing portion for the review. [Meter 19:10]

No one commented on this Administrative Review.

Mr. Nolland suggested contact the Building Inspector and go to the Common Council to change the ordinance.

MOTION:

By Ms. Gilbert, seconded by Mrs. Labounty

THE BOARD IS ASSUMING THAT THE BUILDING INSPECTOR'S DECISION FROM THE ADMINISTRATIVE REVIEW PAPERWORK IS THAT HE FINDS THAT HOLDING OF ANIMALS IS ACCESSORY TO THAT USE - FOOD PROCESSING AND IS NOT PERMITTED IN ANY WAY SHAPE OR FORM UNDER THE ZONING CODE, AND THE BOARD IS UPHOLDING THE DECISION OF THE BUILDING INSPECTOR

CLARIFICATION:

Ms. Gilbert clarified that even though it's accessory, and there is no signed statement from Mr. Perry with the decision being appealed. If that is his decision, this Board is upholding the decision of the Building Inspector, that livestock is not allowed in the City, even for 5 minutes as an accessory use to this food processing.

APPROVED: 5

NO: 0

MOTION TO UPHOLD PASSED

Mr. Nolland further explained if anyone brought dead carcasses to be smoked, processed in any other way – that is not live stock. That is dead stock. [Meter 24:00]

Further discussion about changing the law, being very defined, parades with animals, chickens, upholding the decision of the Building Inspector. [Meter 26:23]

The **second** item on the agenda was Appeal 1898, Janet McCooey, 76 Wall Street for a Class B. Variance.

[Meter 27:00]

Mr. Nolland started this discussion stating they understand she came to the Board and 90 days later, they gave a fence to someone else that was 8' tall. Since this application, they have gone back and forth in the code and there is a section of the code that talks about the ability to have a taller fence with a special permit.

Mr. McMahon said it was page 53, G Fences.

The Board has determined that a special permit means a Special Use Permit. There are 3 kinds of allowed uses in a district. Permitted uses, accessory uses and uses allowed by special permit. Within a district, you are certainly allowed to have a fence but they found a section of the code that allows fences up to 10' high.

Chapter §270, G. Fences and Walls:

“Special Use Permit conditions: The maximum height of any wall or fence located in a rear or side yard may be ten (10) feet in a residence district and may exceed eight (8) feet in other districts, provided that the property owner has secured a special permit for such wall or fence.”

Mr. Nolland advised they have never used this rule ever. Not once. This came up after this application was processed. The problem is they could give you an 8' fence like the other one but this will set a precedence they don't like. The other application had a big grade change, which you don't have here.

The applicant has applied for a Class B Variance. In this case, the Board wants to start to enact this. This gives them the power in extreme circumstances in the neighborhood. (Next to industrial, next to Northway, etc.)

Mr. Nolland requested the applicant apply for a Special Use Permit. She paid \$50.00 for a Class B Variance, which is an incorrect application. No one knew this. This \$50.00 fee will be applied to the Special Use Permit application and come back to the Zoning Board. This will allow the Board to do this properly.

Mr. Nolland apologized for the confusion and delay.

Ms. Gilbert advised a Class B Variance mailing only go to the people that actually touch your property. A Special Use Permit mailing is mailed to 500' circle of properties. So this is why she needs to re-apply and the mailing needs to happen to the neighbors. Legally, they cannot hear it.

MOTION:

By Ms. Gilbert, seconded by Ms. Latinville

**APPEAL 1898 IS THE INCORRECT APPLICATION FOR THIS TYPE OF FENCE
AND THE APPLICANT NEEDS TO COME BACK FOR A SPECIAL USE PERMIT
TERMS, AND TO APPROVE THE \$50.00 FEE WILL BE APPLIED TOWARDS THE
\$100.00 SPECIAL USE PERMIT FEE**

ALL IN FAVOR: 5

OPPOSED: 0

MOTION PASSED

Ms. Davis asked Mr. Nolland to explain what a Special Use Permit was. [Meter 34:32]

The **third** item on the agenda was Appeal 1937, Michael Pettit, 111 Court Street for a Class B. Variance.

[Meter 37:00]

This is on the corner of Court and Williams Street.

This request is to construct a fence that's greater than 30" high in the thirty foot triangle.

Mr. Pettit understood the 30' triangle law. The corner hedge was taken out. The very corner of the sidewalk – if you go back 7' and go in 7' and 7' high – that was the size of the bush that was totally blocking the view completely at the intersection.

A Short Form SEQR, pictures and a drawing were submitted for this application.

Ms. Gilbert asked that no other shrubs be planted in that area. Mr. Pettit said absolutely not.

There were no public comments.

MOTION:

By Ms. Gilbert, seconded by Ms. Latinville

**TO GRANT APPEAL 1937, MICHAEL PETTIT, 111 COURT STREET, TO
CONSTRUCT A FENCE, MAXIMUM OF 40 INCHES HIGH, SEE THROUGH,
WITHIN THE 30 FEET TRIANGLE, WHERE ONLY 30 INCHES IS ALLOWED**

ALL IN FAVOR: 5

OPPOSED: 0

MOTION PASSED

The **fourth** item on the agenda was Appeal 1889, Lake Champlain Pools for a Class B Variance.

[Meter 42:00]

Mr. Nolland advised the board did meet to discuss this signage.

The Building Inspector did give a determination, which was email to Mr. Nolland, where Mr. Perry determined that based on discussions he and Mr. Nolland had, that the chart in the zoning ordinance indicates what allowed in a residential district, been determined by the Building Inspector – asking for a changing sign – an LED Message Board – is not a use variance. It's in fact an Area Variance which allows "0". He has a written determination of this. (Denise – get this)

Mr. Nolland stated the applicant graciously waited for the ordinance on LED signs to be approved. There was one variance given to move a sign. Mr. Hubbell explained the other sign was changeable so they decided to leave it and put another sign in its spot about the same size. They have a variance for 86 sq. feet.

Clinton County did not see this new application. The only information the County has received was the 2011 application, which was due to it being near I-87.

Ms. Gilbert said this has been indefinitely postponed and is exactly the same application the County saw in 2011. Mr. Nolland said at that time, there was a moratorium on LED signs. Ms. Gilbert thought this new application needed to go back to the County because it's different. Mr. Nolland said they've seen it looking like an LED sign. This application has an old Appeal number.

Mr. Nolland then stated any decision made tonight will have to go to the County so they can let them know what their feelings are and if it needs to go back to the County for review.

The applicant has 86 square feet, which is 43 sq. feet per side.

Mr. Hubbell said the LED sign is down to 9 sq. feet, per side, which equals 18 sq. feet X 2, which is 36 sq. feet of signage. The top sign is about 4 x 5. [Discussion on proportions of sign, pellet signs, inflatable guy in pool. [Meter 49:00] The top round portion of the sign is approximately 4 X 6, which is 24 X 2 = 48. 48 + 36 = 84 sq. feet. They currently have 86 sq. feet. Mr. Hubbell said he would be happy to take the other extraneous signs down. Ms Gilbert feels the inflatable guy in the pool is a sign and is a problem.

Mr. Nolland asked if this was the first LED sign permit since the moratorium on signs and the new ordinance was passed. Mr. McMahon said yes. Mr. Nolland advised they are not exceeding the variance they granted before, counting the sign.

There were no public comments on this appeal. [Meter 52:53]

COMMENTS FROM THE BOARD:

Mrs. Labounty stated there have been some specific rules about how often things can change in flashing signs. Because they are just off I-87, she feels those things can be a distraction when things are flashing. There are rules as to how bright it can be, how often it can change, etc. Mr. Hubbell advised he fully intends to follow all those rules. Mrs. Labounty added this is the first of many.

Mr. Nolland advised the following are rules for the LED signs:

- A. Can't change any more than 30 seconds;
- B. Transition takes a certain amount of time;
- C. He cannot advertise anything else from any other place of business on the sign;

If he follows the ordinance, the LED sign should serve him very well. He is paying the area penalty to have a changing sign by reducing his total signage in actual square footage. He went from 84 sq. feet to a smaller sign. [Further explanation by Mr. Nolland, Meter 54:50] He thanked Mr. Hubbell for being patient and not installing an LED sign before the ordinance was approved.

Mrs. Labounty added ultimately it will give them a sign that looks great and serve his needs.

MOTION:

By Mrs. Labounty, seconded by Ms. Fisher

FOR APPEAL #1889, LAKE CHAMPLAIN POOLS, 106 BOYNTON AVENUE, TO GRANT A CLASS B VARIANCE TO ALLOW MORE SIGNAGE THAN ALLOWED WITH AN LED MESSAGE BOARD, WITH THE FOLLOWING STIPULATIONS:

- 1. THAT THE SIZES THAT WERE DISCUSSED AT THE MEETING AS PART OF THE APPLICATION ARE THE SIZES ALLOWED;**
- 2. TAKING INTO ACCOUNT THAT THE LED SECTION IS ACTUALLY COUNTED DOUBLE;**
- 3. THAT THE APPLICANT AGREES TO REMOVE ANY OTHER SIGNAGE THAT IS THERE;**
- 4. THAT THEY WILL FOLLOW THE RULES THAT HAVE BEEN PUT IN PLACE BY THE NEW ORDINANCE IN REGARDS TO LED MESSAGE BOARDS;**
- 5. WITH THE NUMERICS OF 18 SQ. FEET OF LED SIGNAGE, COUNTING FOR 36 SQUARE FEET DOUBLE AND 48 SQUARE FEET TOTAL OF NON CHANGING STATIC**

ALL IN FAVOR: 5

OPPOSED: 0

MOTION PASSED

The Building Inspector will check with Clinton County regarding this revised appeal.

The **fifth** item on the agenda was Appeal 1936, Peter Chase for a Class B Variance.

[Meter 1:01]

Mr. DeMane replace Ms. Gilbert for this appeal.

This request is to construct a deck within required setback which exceeds lot coverage and deficient in open space.

The section appealed is §270-10 Schedule of area and bulk controls.

The previous variance granted in 1983 was for a deck on the roof. Mr. Chase has owned the house for 10 years.

The area and Dimensional Variances were read into the record. There is a SF SEQR for this application.

Mr. Nolland stated the applicant wanted to put an 8 x 10 upper deck and 8 x 10 lower deck. Mr. Chase explained he wants to attach to the upper deck and come out 8' X 10' - off the end of the deck that is currently there.

[Meter 1:05 - Discussion on former deck, making roof leak, tenants climbing over railing making it unsafe, safety reasons for this request.] Mr. McMahon explained originally there was a deck on the roof. It caused the roof to leak so he repaired the roof and got rid of the deck and then decided that putting the deck back on the roof was not a good idea. So he wants to maintain that outdoor space by putting the deck in a new location, which is not on the roof.

Mr. McMahon explained the manner of deviation, upper and lower decks, combined are contribute 5% deficiency to open space and coverage. He believes the numbers are 55% coverage. He must maintain 50% open space. He is only allowed to cover 30%. He's covering roughly 50%.

Mr. Nolland said they have a situation where he exceeds coverage already. Mr. McMahon said the deck on the north side will be too close to the property line on that side. Mr. Chase added he already has a variance between houses.

Mr. McMahon added the applicant is entitled to a deeded deficiency.

[Meter 1:08 – 1:13 Discussion on percentage's, 10 x 10 deck taken off, 4 x 6 is allowed, why he needs a bigger deck, open decks, no roof on deck, roof there now will stay, required supporting bracing for decks for more support.]

No comments from the audience on this appeal.

Ms. Fisher asked why he couldn't do a 4' x 6'. Mr. Chase explained that's too small. Even 8 x 10 is not very big.

Mr. Nolland was concerned about the 4x4's on the existing part and needs supporting bracing. Mr. Chase said he wants to attach right on to existing.

Mrs. Labounty asked if he would be taking out the sliders that lead to the roof. Mr. Chase said yes and will be putting in a window there. Mrs. Labounty also asked why does he need to come out 10'. Mr. Chase said if there is a table put out there it does leave a lot of room. An 8' x 10' then his other deck on the bottom would be over to the side and there would be plenty of room. Mr. DeMane thought it was 8 x 11. He already has 8'. Mr. Chase agreed that would be 11'.

Mrs. Labounty thought this was a lot of hodge-podge ideas. If he puts an 8 x 10' deck on the lower apartment, that will take up almost that whole open area. Mr. Chase is trying to make this safer and better for the tenants. [Meter 1:15]

Ms. Labounty questioned where the property line was. It looks like the house is on the property line, as are those decks as the proposed new decks. Mr. McMahon explained this diagram was submitted with the initial variance back in 1983. This map is to scale.

Mr. McMahon could not say for sure whether the above were right on the property line. Mr. Chase didn't think the home could be built on the property line.

Ms. Fisher questioned enclosing the lower deck. Mr. McMahon said this goes against coverage but it thought it could be enclosed, unless it was part of the motion tonight.

The fence attaches to the back corner of the house. Mr. Nolland thought the fence could be on the property line. Mr. Chase said that is the way he bought it.

Ms. Fisher asked why he couldn't consider a smaller deck. Mr. Chase thought he could go 8' x 8'. He exceeds coverage already.

Mrs. Labounty added it's the top deck bothering her. [Further discussion on side yard coverage, 4-1/2 feet deficient on one side, too close to side yard setback, how lots are smaller, lower deck doesn't infringe on neighbors, allowing an 8' more created deficiency along the side yard, requesting 5' deep and 8' across, compromising on request, Meter 1:20.]

MOTION:

By Mr. DeMane, seconded by Ms. Latinville

TO APPROVE APPEAL #1936, PETER CHASE, 48 - 50 CHAMPLAIN STREET, TO GRANT A CLASS B VARIANCE TO CONSTRUCT A DECK WITHIN THE REQUIRED SETBACK, EXCEEDING LOT COVERAGE AND DEFICIENCY AND OPEN SPACE, PROVISION APPEALED 270-10, SCHEDULE OF AREA AND BULK CONTROLS, WITH THE FOLLOWING CHANGES ON THE PLAN:

1. THE LOWER DECK APPROVED AS SHOWN ON THE DRAWING;
2. UPPER DECK WOULD BE SMALLER;
3. AMOUNT GRANTED IS 5 ADDITIONAL FEET TOWARDS THE BACK OF THE LOT AND A MAXIMUM WIDTH OF 8 FEET WIDE TO MATCH UP TO THE EXISTING DECK ABOVE;
4. NO ROOFS;
5. NEVER TO BE ENCLOSED UNDERNEATH AND ABOVE AS LIVING QUARTERS;
6. WITH THE 5' BEING ALONG THE PROPERTY LINE

Mr. Nolland clarified the upper deck is 5 x 8.

ALL IN FAVOR: 5

OPPOSED: 0

MOTION PASSED

MOTION:

TO ACCEPT AS WRITTEN THE JUNE 18TH, 2012 ZONING MINUTES

By Ms. Latinville, seconded by Ms. Gilbert

ALL IN FAVOR: 5

OPPOSED: 0

MOTION PASSED

MOTION TO ADJOURN:

By Mrs. Labounty, seconded by Ms. Gilbert

ALL IN FAVOR

MOTION PASSED

Meeting adjourned at 9:00 PM

For the purpose of this meeting, this meeting was recorded on the VIQ System. This is a true and accurate copy of the discussion.

Denise Nephew
Secretary
Zoning Board of Appeals